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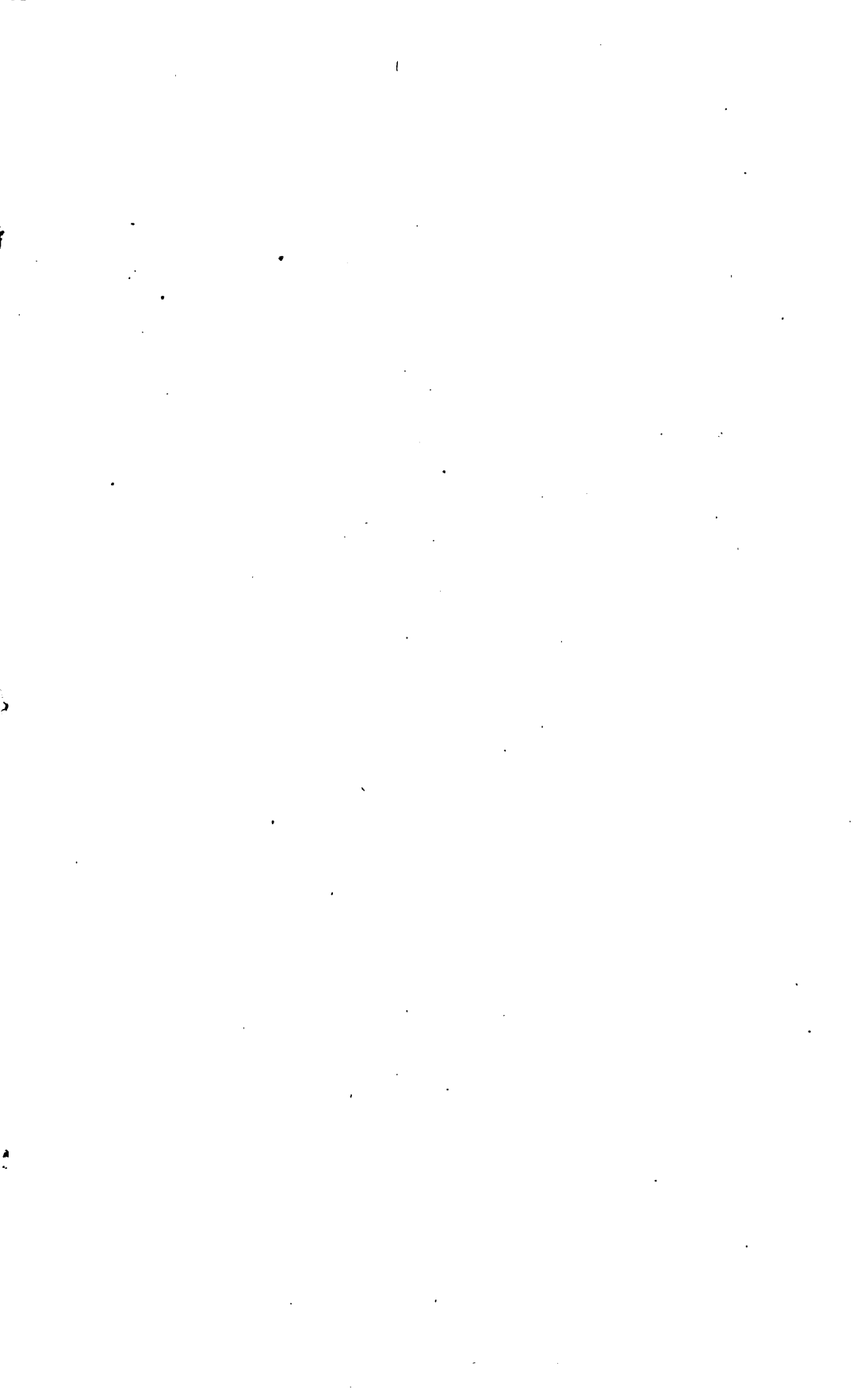
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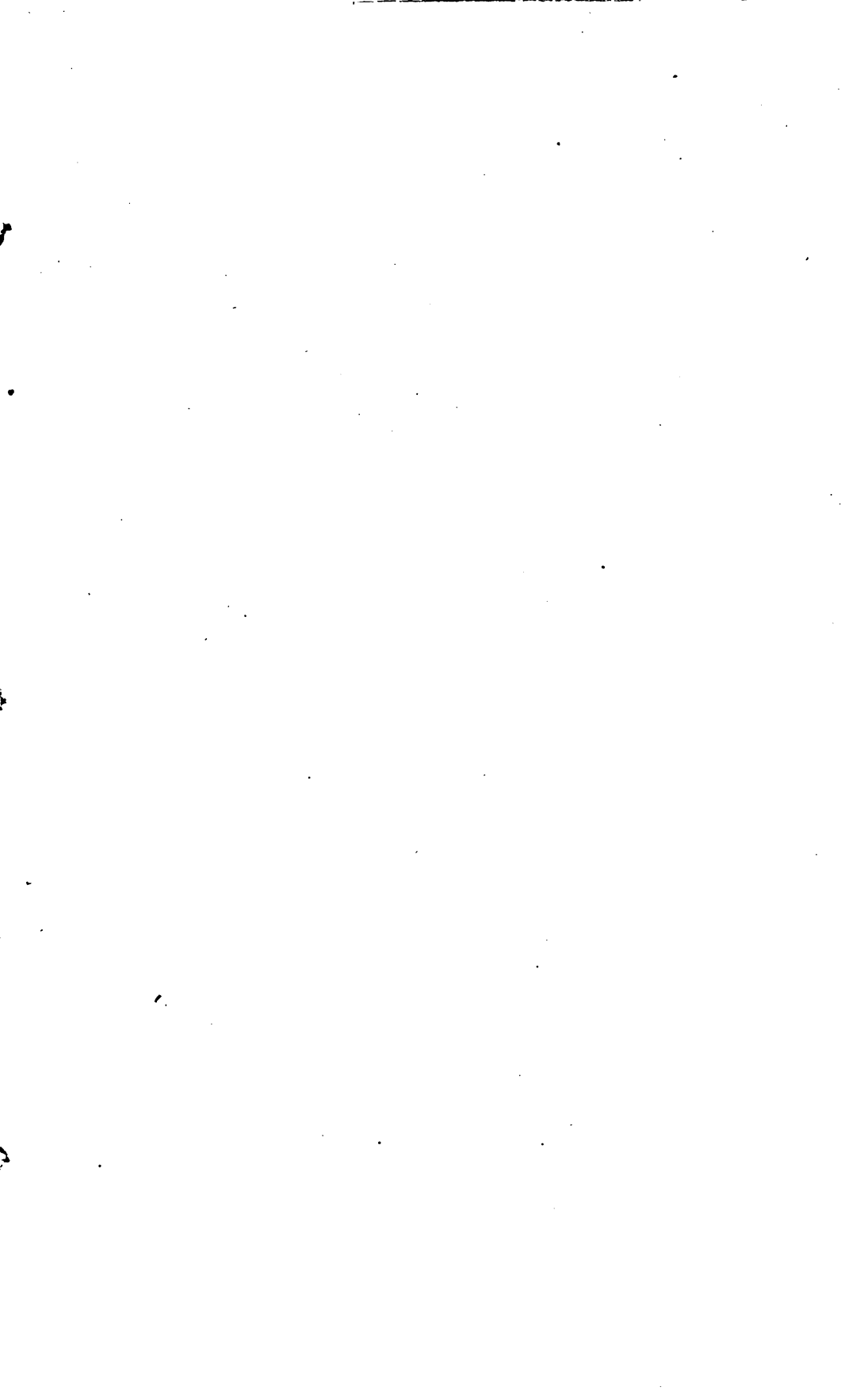
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WILLIAM WHITING.





William Whiting

MEMOIR

OF THE

HON. WILLIAM WHITING, LL.D.

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MEMOIR OF WILLIAM WHITING.

WILLIAM WHITING was born in Concord, March 3, 1813.

He was a descendant from the Rev. Samuel Whiting, D.D., an eminent non-conformist minister in his day, who came to this country in 1636, from Lincolnshire, England, where he was born, and was in early life settled first as rector of Lynn Regis, and afterward as rector of the parish at Skirbeck, near Boston. The old church in which he ministered at Skirbeck is said to be still standing, surrounded by the graves of his long-departed parishioners. Late in the year of his coming to Massachusetts (November, 1636), Mr. Whiting became the minister of the first church in Lynn,¹ and remained in that relation till 1679, when he died, universally lamented and honored, at the age of eighty-two years. He was one of the great lights of his time, and his descendants for seven generations, in many branches of useful and honorable service, have well preserved the traditions of his family.

Nor should we omit in this connection honorable mention of his wife, Elizabeth St. John Whiting, daughter of Sir Oliver St. John,

¹ "Ye towne was called Lin, in compliment to Mr. Whiting, who came here from Lin (Lynn Regis) in old Norfolk. Before, wee were called Saugust, wch wee did not mch like, some nicknameing vs Sawdust. Most that ye name a good one, tho some would have it yt it was too short. But to such wee said, then spell it Lynne. Ye change was made fortie yeare and more agone [1637] and none now find fault."—*Journal of Obadiah Turner*, pp. 86-88.

Knt., and sister of Oliver, Lord Chief Justice of the Common Pleas of England. She is described as remarkable for beauty, dignity, a commanding presence, and endowed with an education which in those days was rare among women. Even in her old age, and under marvellously changed circumstances, she did not lose her youthful fondness for the great poets of England, Chaucer, Spencer, Shakspeare, and others, with whose works her husband's library at Lynn was stored. Though brought up in affluence, and connected by many ties with the lords of the realm, she early fell into sympathy with those who questioned the king's prerogatives, and who were soon to become the lords of the Commonwealth. When her husband's thoughts were turned toward New-England, she,—not of course without deep regrets, but with the pride and zeal of a high-spirited woman,—forwarded his plans and cheerfully shared in all his endeavors. During the time of her residence in Lynn, her house became famous for its hospitality, and she was the friend and companion of many of the leading persons in the colony, whom she often entertained as guests, but without neglecting the daily duties which were a part of her life. No lady ever came to these colonies of higher lineage, of more elegant culture, or of more lovely and christian character.¹

The subject of this memoir was the son of Colonel William Whit-

¹ Cotton Mather, in his "Magnalia" (vol. i. p. 503), thus speaks of her father and herself: He (Mr. Whiting) married the daughter of Mr. Oliver St. John, a Bedfordshire gentleman, of an honorable family, nearly related unto the Lord St. John of Bletso. This Mr. St. John was a person of incomparable breeding, virtue and piety; such that Mr. Cotton, who was well acquainted with him, said of him: "He is one of the completest gentlemen, without affectation, that he ever knew; and this his daughter was a person of singular piety and gravity, one who by her discretion freed her husband from all secular avocations, one who upheld a daily and constant communion with God in the devotions of her closet, one who not only wrote the sermons that she heard on the Lord's days with much dexterity, but lived them; and lived on them all the week. The usual phrase among the ancient Jews for an excellent woman was, 'one who deserves to marry a priest.' Even such an excellent woman was now married unto Mr. Whiting." She died March 3, 1677, aged 72 years.—*Whiting Memoir*, 151-2.

ing and Hannah Conant Whiting, of Concord. He pursued his preparatory studies at the Concord Academy, and graduated at Harvard College in 1833, in the class with Professors Bowen, Lovering and Torrey, the Rev. George E. Ellis, D.D., Doctors Morrill and Jeffries Wyman, and others who have become eminent in science and the learned professions. He received the degree of Master of Arts, in course, in 1836, and the degree of Bachelor of Laws from the Cambridge Law School in 1838; and was admitted to the bar of Massachusetts to practise in the courts of the United States in October of that year.

He was gifted with a clear and penetrating intellect, which, united with great industry, and an uncommon faculty for grasping and analyzing details, enabled him to achieve distinction in his profession, and made him an authority in the departments to which his attention was specially devoted. In the old Court of Common Pleas,—the field of his earlier practice,—he had an amount and variety of business hardly surpassed by any of his competitors, who sometimes gave the name of "Whiting's Court" to that respectable tribunal.

He soon, however, became interested in more important questions, which took him into the higher courts of this and other states and of the United States. His early successes, grounded upon a thorough mastery of his cases, and a complete knowledge of their details, as well as of the principles involved in them, had already given him an assured position in his profession, and secured to him a lucrative and varied practice. But his chief eminence as a lawyer was attained subsequently from his success in important suits, involving large interests, arising under the patent laws, to which the later years of his active professional life were devoted. In undertaking suits of this nature, he studied not only the legal questions on which it was sup-

posed they would turn, but he explored to their most minute mechanical details the application and operation of the patents he was defending or contesting, until he was able to instruct his clients upon practical defects in their inventions as well as upon the law. He acquired in this way the absolute confidence of clients, and established a reputation as a patent lawyer, surpassed by very few, if by any, who are now living.

Mr. Whiting was never so absorbed in his profession as to lose his inherited interest in public questions. His father was one of the early and uncompromising abolitionists of New-England. When the great crisis of the nation was approaching, Mr. Whiting was especially interested in the legal and constitutional questions which the monstrous pretensions of that system forced into prominence. In private communications and public addresses, just before and after the beginning of the war, he showed how earnestly he had grappled with, and how thoroughly he had explored the great crucial questions of the hour. He was among the first, almost the first among lawyers, to claim that the United States had, under the constitution, full belligerent rights against those who inhabited the states in rebellion,—among which were the rights to emancipate their slaves, to capture and sequester their property, and to exercise all the powers of war against a public enemy.

These views first set forth in conversations with responsible officers of the government, were subsequently incorporated in his work on War Powers under the Constitution of the United States,—a work which contributed more than any other single agency to the solution of many of the difficult questions arising in the course of the war. It was written at a time when the strain and pressure upon every point of our constitutional fabric was intense, and when all existing

and long-accepted rules of construction were found to be lamentably unequal to the exigency. The task which he assumed required peculiar and accurate knowledge,—knowledge of legal principles as well as of the history of the country,—and courage of no common order. But he entered upon it without flinching, and pursued it with characteristic vigilance and fidelity to the end.

The early editions of the work on the war powers of the government were adopted by the president and the departments as an authority on the questions treated in it; and new editions followed as rapidly as new questions called for examination and decision. The value placed upon it is best attested by the remarkable fact that within a period of about eight years forty-three editions were printed,—ten in Boston, thirty-three in New-York; and that in the meantime it had been made the basis of volumes of legislation, and its leading doctrines had received the sanction of the highest courts in the land.

In November, 1862, Mr. Whiting was requested by the president to act as solicitor and special counsellor of the war department. Civil suits and criminal prosecutions were pending, in many parts of the country, against military officers and other persons for arrests made under orders from Washington. It was a part of the duty assigned to him to instruct counsel employed in such suits, in order that some uniformity of practice might be secured, and the rights and dignity of the government preserved. As time went on, suits multiplied, involving men in high position. Treason reared its head in many shapes and in many places in the northern or border states. Attempts were made by adroit and reckless men to bring the judicial power of the states into collision with the military forces of the union. Mr. Whiting's *Essay on Military Arrests in Time of War* was pre-

pared for this emergency, and became the guide of the law officers employed by the government in prosecutions of this kind till the close of the war.

The office of solicitor of the war department was created by statute in February, 1863, and Mr. Whiting was formally appointed at that time, though there was no change in the relations he already held to the department. This office he filled till the war was over (April, 1865), when he resigned. No successor was appointed; and the law was repealed the following year.

Although Mr. Whiting believed and acted upon the belief that every man should receive full compensation for his work, he nevertheless declined all payment for services rendered to the government during the war. He looked upon this in his case as a patriotic duty; and without setting up his own action as an example to others, or making any pretensions on account of it, he was content that, if his counsel at such a time was of any value, the country should remain his debtor.

Besides the great questions already mentioned, it became necessary during this period (1862-5) to settle many new principles bearing upon the return of the rebellious states to the union, their provisional government by military power, the claims of the freedmen upon the general government, and the claims of citizens against the United States growing out of the war. On all these questions Mr. Whiting was not only the confidential counsellor of the president, and secretary of war, but he was in almost constant communication with the heads of committees and the leading members of congress in relation to the constitutional and practical questions affecting the great body of wholly unprecedented legislation required by the new order of things. That so great a revolution, reversing the traditions and the social

order of more than two hundred years, could be practically accomplished in so short a time, and with so little disturbance to the peace and prosperity of the country since the war was closed, is owing in no small degree to the counsel which Mr. Whiting, as one of the chief law-officers of the government, gave at the threshold of legislation in regard to it. As our armies vindicated the unity of the country against its foes in the field, Mr. Whiting vindicated the sufficiency of the constitution as a legal bulwark against the narrow and false constructionists who would have left it powerless under the feet of armed rebellion. In all his work at this time the distinction between legal rights in time of peace and legal rights in time of war is very clearly made, and the discussion of principles applicable to each period is elaborate, accurate, and convincing. It covers ground equally important and unexplored, and is an achievement which the nation can hardly value too highly.

Since Mr. Whiting's resignation as solicitor of the war department, the government has had frequent occasion to avail itself of his services in important suits pending against it.

Though deeply interested in politics and public affairs, as we have seen, and not unfamiliar with the ways by which in our times offices are won and lost, Mr. Whiting was very rarely a candidate for political office. His professional engagements, and we may say also, his professional ambition, kept him long from entering that stormy arena, where success is so often attended with very doubtful honor. His first public service of a purely political character was rendered in 1868, when, as a presidential elector for the district in which he resided, he gave its vote for President Grant. In 1872 he was nominated by the republicans of the same district, and was elected as

its representative in the Forty-third Congress, succeeding the Hon. Ginery Twichell. To the responsibilities and duties of this position he had looked forward with confidence, and with well-grounded hopes of still greater usefulness and distinction. His ambition in his chosen profession had been abundantly gratified, and it was an agreeable change which opened to him a more conspicuous, if not a more honorable career. His quality of mind and his severe and life-long training would have enabled him to take no common rank in the new tribunal to which he had been chosen. His neighbors and constituents, with many of whom he held relations of closer personal intimacy than are usual between people and their representatives, also felt that they had every reason to look forward to his service in the councils of the nation as one that would not only bring increase of fame to him but would reflect honor upon themselves; and they lamented his loss as that of a statesman who had just failed to enjoy the public recognition he had fairly earned; of a patriot sincerely and honestly devoted to the country's interests; of a legislator of ripe talents and rare capacity for public work; and a citizen pure, upright and incorruptible in all the relations of life.

In the intervals of his professional and public labor, Mr. Whiting took an active interest in historical and antiquarian studies, and was a generous contributor to societies devoted to these objects. He was president of the New-England Historic, Genealogical Society from 1853 to 1858; corresponding member of the New-York Historical Society; honorary member of the historical societies of Pennsylvania, Wisconsin, and Florida; and corresponding member of the Philadelphia Numismatic and Antiquarian Society. To all these societies he contributed liberally the results of his investigations, and their

annals bear abundant witness otherwise to his active and intelligent interest in their work. His address before the Historic, Genealogical Society in January, 1853, upon entering on the duties of the presidency, was in the true spirit of the genealogist and antiquary, and marked out an heroic outline of work which the society has since, according to its means, endeavored to execute.

Among his own books, which cannot be overlooked in a notice of this kind, is his "Memoir of the Rev. Samuel Whiting, D.D., and of his wife Elizabeth St. John ; with references to some of their English ancestors and American descendants,"—a beautiful volume, printed but not published, which merits a very high place in the roll of New-England biographies. The same persistent and unsparing labor which he gave to his profession, he also gave to the literary work to which he was fond of resorting by way of diversion. His occasional addresses always bore the results of original thought and of careful and patient execution. A striking example of this is his last literary address before the combined societies of Colby University, in July, 1872, on the Laws and Conditions of Intellectual Power. He received at that time the honorary degree of Doctor of Laws from the government of that university.

This brief sketch would be incomplete if it omitted reference to the felicities of Mr. Whiting's home. It was there he found the quiet and solace without which his delicate physical organization could never have borne the exacting strain of his long and unremitting labors. There also was his study, where his successive cases received that thorough consideration and preparation which established his fame as a lawyer, and where the written or printed arguments in each case are now preserved. There, too, may be seen, within

and without, abounding evidence of his remarkable industry and pure taste, which made every inch of his grounds contribute to the general effect he sought, and filled every niche in his house with objects of interest and beauty.

His public spirit prompted his support of all deserving objects in the community of which he was for so many years a member. He was among the earliest advocates of the union of the municipalities of Roxbury and Boston. He showed by his acts in many striking instances the deep interest he always felt in young men. The extent of his private giving will never be known, if it were desirable. It is enough that few worthy objects ever called in vain upon him. By his will he left five thousand dollars to Harvard College for a scholarship, and to the free public library in his native town one thousand dollars.

In a profession so absorbing as the law to those who fill its high places, little leisure is usually found for wide general studies, outside of its absolute requirements; but to meet these in accordance with Mr. Whiting's standard, and as he met them, there was necessary a good acquaintance with many departments of science. It may be truly said that he was rarely wanting in precise information on all the points of his large practice. When the great struggle of his time came, his sympathies and studies had fully prepared him for it, and he gave to the national cause a support as efficient and unselfish as that of the best and bravest. He had the full confidence of Mr. Lincoln, and few men held that providential leader in profounder veneration. In his religious belief Mr. Whiting was a Unitarian.

Mr. Whiting died at his house on Montrose Avenue, Roxbury, on the 29th of June, 1873, aged sixty years. He had been confined

within doors but a few days, and his illness had excited no apprehensions. Late in the afternoon of that day, while resting quietly on his pillow, he was seized with sharp pains about the heart, and expired in a few moments.

He was married in October, 1840, to Lydia Cushing Russell, daughter of the Hon. Thomas Russell, of Plymouth, who with three children survives him.

WORKS OF MR. WHITING.

1. Argument. Boston Gas Light Company vs. William Gault. Boston, 1848. 8vo. pp. 55.
2. Argument in the case of Elias Johnson *et al.* vs. Peter Low *et al.* Boston, 1848. 8vo.
3. Report of the Committee in Favor of the Union of Boston and Roxbury. Boston, 1851. 8vo. pp. 35.
4. Speech before a Committee of the Legislature of Massachusetts on the Destruction of Boston Harbor. Boston, 1851. 8vo. pp. 80.
5. Argument in the Supreme Court of the United States in the case of Brooks vs. Fiske *et al.* (case of Woodworth Planing Machine Patent). 1852. 8vo. pp. 87.
6. Argument in the case of Ross Winans vs. Orasmus Eaton *et al.* before the Circuit Court of the United States for the Northern District of New-York (on the patent for the eight-wheeled car). 1853. pp. 165.
7. Address delivered to the members of the New-England Historic, Genealogical Society, on assuming the office of President. Boston, 1853. 8vo. pp. 16.
8. Memoir of the Rev. Joseph Harrington. Boston, 1854. 12mo. pp. 64.
9. Argument before a Committee of the Legislature of Massachusetts in behalf of the Remonstrants against the erection of a Bridge across Chelsea Creek. 1854. 8vo. pp. 29.

10. Argument in the case of interference between Farley and Allen (the Volute Spring Steam Guage). 1858. 8vo. pp. 102.

11. Twenty Years' War against the Railroads: a Letter to the Hon. Erastus Corning. 1860. 8vo. pp. 29.

12. Closing Argument in the Supreme Court of the United States in the case of Ross Winans vs. New-York and Erie Railroad. 1860. pp. 116.

13. The War Powers of the President and the Legislative Powers of Congress in Relation to Rebellion, Treason and Slavery. Boston, 1862. 8vo. pp. 143.¹

14. The Return of the Rebellious States to the Union; a Letter to the Union League of Philadelphia, 1863. 8vo. pp. 15.

15. Military Arrests in Time of War. Washington, 1863. 8vo. pp. 59.

16. Opinions on "Slavery," and "Reconstruction of the Union" as expressed by President Lincoln. With brief Notes. 1864. 8vo. pp. 16.

17. Military Government of Hostile Territory in Time of War. Boston, 1864. 8vo. pp. 92.

18. Argument in the Circuit Court of the United States in the case of Union Sugar Refinery vs. the Continental Sugar Refinery. Boston, 1867. 8vo. pp. 190.

19. Address before the Boston Highlands Grant Club, August 5, 1868. Boston, 1868. 8vo. pp. 44.

¹ A friend has furnished the following memoranda relative to the several editions of Mr. Whiting's "War Powers."

First edition, published by John L. Shorey, Boston. 1862.

Second edition, by same, with preface by author. 1862.

Third edition, not found.

Fourth edition, published by Shorey, for the Emancipation League. 1863.

Fifth edition, not found.

Sixth edition, by Shorey, for the Emancipation League. 1863.

Seventh edition, with Appendix. Shorey, 1863. 8vo. pp. 151.

Eighth edition, with essay on "Military Arrests in time of War," and Letter to the Union League of Philadelphia on the Return of the Rebellious States to the Union. Shorey, 1864. 8vo. pp. 263.

Tenth edition, with "Military Arrests," Return of the Rebellious States, or, as it was then called, Reconstruction of the Union, and "Military Government in Time of War." Little & Brown. 1864. 8vo. pp. 342.

Forty-third edition, Lee & Shepard, with addition of "War Claims of Aliens," "Opinions of the Supreme Court," and "Notes" and Appendix. 1871. 8vo. pp. 695.

Editions of this work were issued also in Washington, Philadelphia, and New-York, and one at least was printed for foreign distribution.

20. Address on the Constitutionality of the Reconstruction Laws. Oct. 13, 1868. [Boston Daily Advertiser, Oct. 14, 1868.]

21. Argument in the case of *Crowell vs. Sim et al.* 1869. pp. 34.

22. Argument in case before the Circuit Court of the United States for New-York, in the case of *Rumford Chemical Works vs. John E. Lauer.* 1869. pp. 78.

23. Argument in case of *The City of Chicago vs. George T. Bigelow, administrator, &c., appellee.* Boston, 1869. 8vo. pp. 57. (Not delivered.)

24. Argument before Hon. George S. Hillard, Master in Chancery. *Union Sugar Refinery vs. Francis O. Matthiessen* (rule in equity as to costs). Boston, 1869. 8vo. pp. 120.

25. Argument before the Commissioner of Patents in behalf of Capt. Prince S. Crowell. Boston, 1870. 8vo. pp. 114.

26. Letter to the Hon. Henry Wilson on the Pacific Railroad. 1870. 8vo. pp. 7.

27. Argument in the Circuit Court in the case of *James S. Carew et al. vs. Boston Elastic Fabric Company.* Boston, 1871. 8vo. pp. 107.

28. Memoir of Rev. Samuel Whiting, D.D., and of his wife Elizabeth St. John. Boston, 1872. 8vo. pp. 334. [Fifty copies. Second edition 1873, pp. 334, two hundred copies. Neither edition was published, both being printed for private distribution.]

29. Argument in the Circuit Court of the United States for New-York the *Union Paper Collar Company vs. Ward.* 1872. pp. 850.

30. Argument in the Circuit Court of the United States for New-York: the *Rumford Chemical Works vs. Hecker et al.* 1872.

31. Address before the Boston Highlands Grant and Wilson Club, September 16, 1872. 8vo. pp. 45.

32. Address before the Combined Literary Societies of Colby University, July 22, 1872. Boston, 1872. 8vo. pp. 24.

